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Joan Hagen Spiegel
Washington University School of Law

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RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS: DISTINGUISHING THE "ENTERPRISE" ISSUES

The Organized Crime Control Act of 1970¹ (OCCA) contains twelve substantive titles² directed toward the eradication of organized crime in the United States.³ Title IX of the Act, "Racketeer Influenced and

1. Pub. L. No. 91-452, 84 Stat. 922 (1970) (codified in scattered sections of 7, 11, 15-16, 18-19, 21, 28-29, 33, 42, 45-47, 49-50 U.S.C.). See [1970] U.S. CODE CONG. & AD. NEWS 4007.

2. The titles are: Title I, Special Grand Jury, 18 U.S.C. §§ 3331-3334 (1976); Title II, Immunity of Witnesses, 18 U.S.C. §§ 6001-6005 (1976 & Supp. III 1979); Title III, Recalcitrant Witnesses, 28 U.S.C. § 1826 (1976); Title IV, False Declarations Before Grand Jury or Court, 18 U.S.C. § 1623 (1976); Title V, Protected Facilities for Housing Government Witnesses, 18 U.S.C. § 3481 note (1976); Title VI, Depositions to Preserve Testimony, 18 U.S.C. § 3503 (1976); Title VII, Litigation Concerning Sources of Evidence, 18 U.S.C. § 3504 (1976 & Supp. III 1979); Title VIII, Obstruction of State or Local Law Enforcement, 18 U.S.C. § 1511 (1976); Title IX, Racketeer Influenced and Corrupt Organizations, 18 U.S.C. §§ 1961-1968 (1976 & Supp. III 1979); Title X, Increased Sentences for Dangerous Special Offenders, 18 U.S.C. §§ 3575-3578 (1976); Title XI, Importation, Manufacture, Distribution and Storage of Explosive Materials, 18 U.S.C. §§ 841-848 (1976); Title XII, National Commission on Individual Rights, 18 U.S.C. § 3331 note (1976). See generally Note, *Organized Crime Control Act of 1970*, 4 U. MICH. J.L. REF. 546 (1971).

3. Congressional Statement of Findings and Purpose, Organized Crime Control Act of 1970, Pub. L. No. 91-452, § 1, 84 Stat. 922 (1970), provides:

The Congress finds that (1) organized crime in the United States is highly sophisticated, diversified, and widespread activity that annually drains billions of dollars from America's economy by unlawful conduct and the illegal use of force, fraud, and corruption; (2) organized crime derives a major portion of its power through money obtained from such illegal endeavors as syndicated gambling, loan sharking, the theft and fencing of property, the importation and distribution of narcotics and other dangerous drugs, and other forms of social exploitation; (3) this money and power are increasingly used to infiltrate and corrupt legitimate business and labor unions and to subvert and corrupt our democratic processes; (4) organized crime activities in the United States weaken the stability of the nation's economic system, harm innocent investors and competing organizations, interfere with free competition, seriously burden interstate and foreign commerce, threaten domestic security, and undermine the general welfare of the Nation and its citizens; and (5) organized crime continues to grow because of defects in the evidence-gathering process of the law inhibiting the development of legally admissible evidence necessary to bring criminal and other sanctions or remedies to bear on the unlawful activities of those engaged in organized crime because the sanctions and remedies available to the Government are unnecessarily limited in scope and impact.

It is the purpose of this Act to seek the eradication of organized crime in the United States by strengthening the legal tools in the evidence-gathering process, by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime.

Id. at 923 [hereinafter cited as Congressional Statement of Findings and Purpose]. For general accounts of organized crime's activities in the United States, see Johnson, *Organized Crime: Challenge to the American Legal System*, 53 J. CRIM. L.C. & P.S. 399 (1962); Wilson, *The Threat of Organized Crime: Highlighting the Challenging New Frontiers in Criminal Law*, 46 NOTRE DAME LAW. 41 (1970); Note, *The Strike Force: Organized Law Enforcement v. Organized Crime*, 6

Corrupt Organizations" (RICO),⁴ is a result of congressional concern over organized crime's increasing infiltration into the nation's democratic and economic institutions.⁵ Through RICO, Congress sought to eliminate the infiltration of organized crime⁶ and racketeering into legitimate business organizations.⁷

COLUM. J.L. & SOC. PROB. 496, 498-500 (1970); Comment, *Organized Crime: Developing Devices for Debilitating Desperados*, 1970 L. & SOC. ORDER 121, 121-22. For accounts of organized crime's infiltration of legitimate businesses, see 116 CONG. REC. 22772 (1970); 115 CONG. REC. 17504 (1969); G. BLAKEY, R. GOLDSTOCK & G. BRADLEY, *THE INVESTIGATION AND PROSECUTION OF ORGANIZED CRIME AND LABOR RACKETEERING; LABOR RACKETEERING: BACKGROUND MATERIALS* (LEAA Monograph, 1979); E. DEFranco, *ANATOMY OF A SCAM: A CASE STUDY OF A PLANNED BANKRUPTCY BY ORGANIZED CRIME* (LEAA Monograph, 1973); McKeon, *The Incur-sion by Organized Crime into Legitimate Business*, Symposium: *Organized Crime*, 20 J. PUB. L. 117 (1971). See generally G. BLAKEY, R. GOLDSTOCK & C. ROGOVIN, *RACKETS BUREAUS: INVESTIGATION AND PROSECUTION OF ORGANIZED CRIME* (LEAA Monograph, 1978); F. IANNI, *ETHNIC SUCCESSION IN ORGANIZED CRIME* (LEAA Monograph, 1973); *The Federal Effort Against Organized Crime: Hearings Before the Subcomm. on Legal and Monetary Affairs of the House Comm. on Government Operations*, 90th Cong., 1st Sess. (1967); *U.S. President's Comm. on Law Enforcement and The Administration of Justice, Task Force Report: Organized Crime* (1967).

4. 18 U.S.C. §§ 1961-1968 (1976 & Supp. III 1979).

5. See Congressional Statement of Findings and Purpose, *supra* note 3.

6. See Note, *The Racketeer Influenced and Corrupt Organizations Act: An Analysis of the Confusion in Its Application and a Proposal for Reform*, 33 VAND. L. REV. 441, 441-42 n.4 (1980), defining "organized crime" as "the expression used to describe different groups of individuals who supply illegal goods and services—gambling, narcotics, and other forms of vice—to countless numbers of citizen customers." It is clear that RICO is not restricted to application against members of organized crime. Rather, "organized crime" is a generic term used to describe racketeering activity and criminal behavior. See, e.g., *United States v. Aleman*, 609 F.2d 298, 303 (7th Cir. 1979), *cert. denied*, 445 U.S. 946 (1980); *United States v. Campanale*, 518 F.2d 352, 363-64 (9th Cir. 1975), *cert. denied*, 423 U.S. 1050 (1976); *Parnes v. Heinhold Commodities, Inc.*, 487 F. Supp. 645, 646 (N.D. Ill. 1980); *United States v. Mandel*, 415 F. Supp. 997, 1018-19 (D. Md. 1976). But see *Barr v. WIU/TAS, Inc.*, 66 F.R.D. 109, 113 (S.D.N.Y. 1975). See generally Atkinson, "Rack-eteer Influenced and Corrupt Organizations," 18 U.S.C. §§ 1961-68: *Broadest of the Federal Criminal Statutes*, 69 J. CRIM. L. & C. 1, 9-10 (1978).

7. See generally *Hearings on S.30, and Related Proposals Relating to the Control of Organized Crime Before Subcomm. No. 5 of the House Comm. on the Judiciary*, 91st Cong., 2d Sess. 77-80 (1970) [hereinafter cited as *House Hearings*]; *Hearings on S.30 Before the Subcomm. on Criminal Laws and Procedure of the Senate Comm. on the Judiciary*, 91st Cong., 1st Sess. 404-08 (1969) [hereinafter cited as *Senate Hearings*]; HOUSE COMM. ON THE JUDICIARY, REPORT ON ORGANIZED CRIME CONTROL ACT OF 1970, H.R. DOC. NO. 1549, 91st Cong., 2d Sess. 39, 56-57 (1970) [hereinafter cited as HOUSE REPORT], reprinted in [1970] U.S. CODE CONG. & AD. NEWS 4032-33; SENATE COMM. ON THE JUDICIARY, REPORT ON ORGANIZED CRIME CONTROL ACT OF 1969, S. REP. NO. 617, 91st Cong., 1st Sess. 76-83, 159, 211, 214 (1969) [hereinafter cited as SENATE REPORT]; McCLELAN, *The Organized Crime Act (S.30) or Its Critics: Which Threatens Civil Liberties?*, 46 NOTRE DAME LAW. 55, 141, 144 (1970); Note, *Organized Crime and the Infiltration of Legitimate Business: Civil Remedies for "Criminal Activity"*, 124 U. PA. L. REV. 192, 204-06 (1975). For a history of the legislation that became Title IX, see Bradley, *Racketeers, Congress and the Courts: An Analysis of RICO*, 65 IOWA L. REV. 837, 838-45 (1980).

RICO specifically proscribes the investment in, maintenance of an interest in, participation in, or association with an "enterprise" through a pattern of racketeering activity.⁸ Thus, it is defendants' involvement with an "enterprise," and not their underlying racketeering acts, that forms the basis of any RICO prosecution.⁹ Due to the complexity of RICO's statutory provisions, its broad language, and unique approach, interpretation of the term "enterprise" has been a continuing source of litigation since the statute's enactment in 1970.¹⁰ Much of this litigation has concerned the scope of the enterprise requirement. Until last year the lower federal courts were in conflict over the extension of "enterprise" to cover wholly illegitimate organizations.¹¹ The United States Supreme Court recently upheld the position taken by most lower

8. 18 U.S.C. § 1962 (1976).

9. *Id.*

10. The term "enterprise" as used in RICO has been held to apply to illegitimate organizations, *see, e.g.*, *United States v. Provenzano*, 620 F.2d 985, 993 (3d Cir.), *cert. denied*, 449 U.S. 899 (1980); *United States v. Aleman*, 609 F.2d 298, 304 (7th Cir. 1979), *cert. denied*, 445 U.S. 946 (1980); *United States v. Sutton*, 605 F.2d 260, 273 (6th Cir. 1979) (Engel, J., dissenting), *vacated*, 642 F.2d 1001 (6th Cir. 1980); *United States v. Diecidue*, 603 F.2d 535, 545 (5th Cir. 1979), *cert. denied*, 445 U.S. 946 (1980), and governmental entities, *see, e.g.*, *United States v. Bright*, 630 F.2d 804, 829 (5th Cir. 1980); *United States v. Altomare*, 625 F.2d 5, 7 (4th Cir. 1980); *United States v. Karas*, 624 F.2d 500, 504 (4th Cir. 1980), *cert. denied*, 449 U.S. 1078 (1981); *United States v. Grant*, 622 F.2d 308, 313 (8th Cir. 1980); *United States v. Baker*, 617 F.2d 1060, 1061 (4th Cir. 1980); *United States v. Grzywacz*, 603 F.2d 682, 685-86 (7th Cir. 1979), *cert. denied*, 446 U.S. 935 (1980); *United States v. Burnsed*, 566 F.2d 882, 884 (4th Cir. 1977), *cert. denied*, 434 U.S. 1077 (1978); *United States v. Frumento*, 563 F.2d 1083, 1087-88 (3d Cir. 1977), *cert. denied*, 434 U.S. 1072 (1978); *United States v. Ohlson*, 552 F.2d 1347, 1349 (9th Cir. 1977). *But see* *United States v. Mandel*, 415 F. Supp. 1025, 1027 (D. Md. 1976).

11. *See, e.g.*, *United States v. Aleman*, 609 F.2d 298 (7th Cir. 1979), *cert. denied*, 445 U.S. 946 (1980) (enterprise formed for illegal purpose is RICO enterprise); *United States v. Sutton*, 605 F.2d 260 (6th Cir. 1979) (Engel J., dissenting) (enterprise not limited to ostensibly legitimate enterprises), *vacated*, 642 F.2d 1001 (6th Cir. 1980); *United States v. Diecidue*, 603 F.2d 535 (5th Cir. 1979), *cert. denied*, 445 U.S. 946 (1980) (enterprise's scope includes robbery, counterfeiting, murder, and illegal use of explosives); *United States v. Rone*, 598 F.2d 564 (9th Cir. 1979), *cert. denied*, 445 U.S. 946 (1980) (enterprise's scope includes association to commit murder and extortion); *United States v. Elliott*, 571 F.2d 880 (5th Cir.), *cert. denied*, 439 U.S. 953 (1978) (enterprise includes association for illicit purpose); *United States v. Altese*, 542 F.2d 104 (2d Cir. 1976), *cert. denied*, 429 U.S. 1039 (1977) (enterprise includes all enterprises); *United States v. Morris*, 532 F.2d 436 (5th Cir. 1976) (enterprise includes association to defraud in illegal card games); *United States v. Hawes*, 529 F.2d 472 (5th Cir. 1976) (enterprise not limited to legitimate businesses); *United States v. Cappetto*, 502 F.2d 1351 (7th Cir. 1974), *cert. denied*, 420 U.S. 925 (1975) (enterprise includes illegal gambling business). *Cf.* *United States v. Anderson*, 626 F.2d 1358 (8th Cir. 1980) (enterprise must exist separate and apart from commission of racketeering acts), *cert. denied*, 101 S. Ct. 1351 (1981). *Contra*, *United States v. Turkette*, 632 F.2d 896 (1st Cir. 1980), (enterprise limited to legitimate organizations), *rev'd*, 101 S. Ct. 2524 (1981); *United States v. Sutton*, 605 F.2d 260 (6th Cir. 1979) (enterprise limited to legitimate organizations), *vacated*, 642 F.2d 1001 (6th

federal courts¹² by ruling, in *United States v. Turkette*,¹³ that the term "enterprise" encompasses both legitimate and illegitimate organizations.¹⁴

Although *Turkette* will likely resolve the legitimate/illegitimate dispute, the decision left open an even more difficult question concerning RICO's enterprise element. Most courts have implicitly concluded that individuals associated only to commit racketeering acts are an enterprise.¹⁵ This conclusion, in effect, eliminates the enterprise element from RICO and alters the essential elements of a RICO offense as determined by Congress.

The purpose of this Note is to examine these two issues concerning the scope of the term "enterprise." Although *Turkette* settles the term's application to illegitimate organizations, that decision failed to resolve the term's application to individuals associated only to commit racketeering acts.¹⁶ A final determination of this latter question is crucial to both the scope and constitutional application of RICO.

This Note begins with an examination of RICO's statutory provisions. It then reviews the legitimate/illegitimate disputes and the Supreme Court's resolution of that dispute in *Turkette*. Finally, it discusses the still unresolved question of whether "enterprise" includes individuals associated only by a pattern of racketeering activities. This Note concludes that although RICO's legislative history contemplates an interpretation of the term "enterprise" encompassing only legitimate

Cir. 1980); *United States v. Moeller*, 402 F. Supp. 49 (D. Conn. 1975) (same), *overruled*, *United States v. Altese*, 542 F.2d 104 (2d Cir. 1976).

12. See *United States v. Aleman*, 609 F.2d 298 (7th Cir. 1979), *cert. denied*, 445 U.S. 946 (1980); *United States v. Sutton*, 605 F.2d 260 (6th Cir. 1979), *vacated*, 642 F.2d 1001 (6th Cir. 1980); *United States v. Diecidue*, 603 F.2d 535 (5th Cir. 1979), *cert. denied*, 445 U.S. 946 (1980); *United States v. Rone*, 598 F.2d 564 (9th Cir. 1979), *cert. denied*, 445 U.S. 946 (1980); *United States v. Swiderski*, 593 F.2d 1246 (D.C. Cir. 1978), *cert. denied*, 441 U.S. 933 (1979); *United States v. Elliott*, 571 F.2d 880 (5th Cir.), *cert. denied*, 439 U.S. 953 (1978); *United States v. Altese*, 542 F.2d 104 (2d Cir. 1976), *cert. denied*, 429 U.S. 1039 (1977); *United States v. Morris*, 532 F.2d 436 (5th Cir. 1976); *United States v. Hawes*, 529 F.2d 472 (5th Cir. 1976); *United States v. Cappelto*, 502 F.2d 1351 (7th Cir. 1974), *cert. denied*, 420 U.S. 925 (1975). See also *United States v. Castellano*, 416 F. Supp. 125 (E.D.N.Y. 1975).

13. 101 S. Ct. 2524 (1981).

14. *Id.* at 2533-34.

15. See, e.g., *United States v. Sutton*, 605 F.2d 260 (6th Cir. 1979) (Engel, J., dissenting), *vacated*, 642 F.2d 1001 (6th Cir. 1980); *United States v. Rone*, 598 F.2d 564 (9th Cir. 1979), *cert. denied*, 445 U.S. 946 (1980); *United States v. Elliott*, 571 F.2d 880 (5th Cir. 1976), *cert. denied*, 439 U.S. 953 (1978); *United States v. Altese*, 542 F.2d 104 (2d Cir. 1976), *cert. denied*, 429 U.S. 1039 (1977); *United States v. Cappelto*, 502 F.2d 1351 (7th Cir. 1974), *cert. denied*, 420 U.S. 925 (1975).

16. *United States v. Turkette*, 101 S. Ct. 2524, 2533-34 (1981).

organizations, RICO's statutory language permits the *Turkette* interpretation of the term "enterprise" as encompassing both legitimate and illegitimate organizations. An interpretation of the term "enterprise" that includes individuals associated in fact only to commit racketeering, however, violates RICO's statutory language and legislative history, fundamental principles of statutory construction, the principle of federalism, and the constitutional guarantee against double jeopardy. In the final analysis, a broad interpretation of the term "enterprise" to encompass individuals associated only to commit racketeering acts reads the pivotal "enterprise" element out of RICO.

I. RICO'S STATUTORY PROVISIONS

RICO's statutory provisions are complex and interrelated. Section 1962 of the statute defines RICO's substantive prohibitions.¹⁷ Section 1962(a) prohibits the acquisition of an enterprise affecting interstate commerce with income received from a pattern of racketeering activity or through collection of an unlawful debt.¹⁸ Section 1962(b) prohibits

17. 18 U.S.C. § 1962 (1976).

18. 18 U.S.C. § 1962(a) (1976) states:

It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern of racketeering activity of the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

The apparent purpose of § 1962(a) is to prevent organized crime from gaining economic control of legitimate business enterprises through the investment of proceeds from its illegal activities in such enterprises. See Symposium, *White-Collar Crime: Racketeering Influenced and Corrupt Organizations (RICO)*, 18 AM. CRIM. L. REV. 169, 308 (1980); Note, *supra* note 2, at 623; Note, *Investing Dirty Money: Section 1962(a) of the Organized Crime Control Act of 1970*, 83 YALE L.J. 149 (1974).

Congressional power to prohibit activities made unlawful by state law stems from the constitutional grant of power to regulate under the commerce clause. U.S. CONST. art. I, § 8, cl. 3. Thus, the activities prohibited by 18 U.S.C. § 1962 (1976) must affect interstate or foreign commerce. See, e.g., *United States v. Capetto*, 502 F.2d 1351, 1356 (7th Cir. 1974) (citing *United States v. Hunter*, 478 F.2d 1019, 1021 (7th Cir.), *cert. denied*, 414 U.S. 857 (1973)), *cert. denied*, 420 U.S. 925 (1975). Cf. *United States v. Fineman*, 434 F. Supp. 189, 195 (E.D. Pa. 1977) (minimal impact on interstate commerce sufficient). See generally *Katzenbach v. McClung*, 379 U.S. 294 (1964); *Heart*

the acquisition or maintenance of an interest in an enterprise affecting interstate commerce through a pattern of racketeering activity or the collection of an unlawful debt.¹⁹ Section 1962(c) prohibits persons from conducting the affairs of an enterprise affecting interstate commerce through a pattern of racketeering activity or collection of an unlawful debt.²⁰ Section 1962(d) makes it unlawful for any person to conspire to violate any of the provisions of subsections (a), (b), or (c) of section 1962.²¹

Section 1961 of RICO sets forth definitions clarifying the statute's substantive prohibitions.²² A "pattern of racketeering activity" requires the commission of two or more racketeering acts occurring within ten years of each other, with at least one racketeering act occurring after October 15, 1970, the effective date of the statute.²³ "Racketeering activity" is defined as any act or threat in violation of one or more than thirty state and federal laws.²⁴ Any single violation of the

of *Atlanta Motel, Inc. v. United States*, 379 U.S. 241 (1964); *Wickard v. Filburn*, 317 U.S. 111 (1942); *Caminetti v. United States*, 242 U.S. 470 (1917); Note, *supra* note 7, at 207-22.

19. 18 U.S.C. § 1962(b) (1976) provides:

It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

Section 1962(b) differs from § 1962(a), *see* note 18 *supra*, in that it does not require the direct use of income in the acquisition of an interest in the enterprise. *See* Note, *supra* note 2, at 624.

20. 18 U.S.C. § 1962(c) (1976) provides:

It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debts.

Section 1962(c)'s aim is to prevent organized crime from using a legitimate business as a basis for conducting racketeering activities. *See* Note, *supra* note 2, at 624.

21. 18 U.S.C. § 1962(d) (1976) provides: "It shall be unlawful for any person to conspire to violate any of the provisions of subsections (a), (b), or (c) of this section."

22. 18 U.S.C. § 1961 (1976).

23. 18 U.S.C. § 1961(5) (1976) provides:

"[A] pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity.

24. 18 U.S.C. § 1961(1) (Supp. III 1979) provides:

"[R]acketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious,

enumerated provisions is a "racketeering act" that forms the necessary basis of a "pattern of racketeering activity."²⁵ "Enterprise" is defined broadly in section 1961(4) as including any "individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity."²⁶

RICO prescribes severe criminal penalties for conviction under its substantive provisions, including a fine of up to \$25,000, imprisonment for up to twenty-five years, and forfeiture of interests acquired or maintained in violation of the statute.²⁷ In addition to criminal penalties, RICO prescribes broad civil remedies,²⁸ modeled after the antitrust

section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1951 (relating to interference with commerce, robbery or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), sections 2314 and 2315 (relating to interstate transportation of stolen property), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-2424 (relating to white slave traffic); (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), or (D) any offense involving fraud connected with a case under title 11, fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States.

25. See notes 23-24 *supra* (quoting 18 U.S.C. § 1961(1), -(5) (1976)).

26. 18 U.S.C. § 1961(4) (1976) provides that "'enterprise' includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity."

27. 18 U.S.C. § 1963(a) (1976) provides:

Whoever violates any provision of section 1962 of this chapter shall be fined not more than \$25,000 or imprisoned not more than twenty years, or both, and shall forfeit to the United States (1) any interest he has acquired or maintained in violation of section 1962, and (2) any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over, any enterprise which he has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962.

For a discussion of the criminal penalty provisions of RICO, see Atkinson, *supra* note 6, at 15-17. See also [1970] U.S. CODE CONG. & AD. NEWS 4007, 4081-84.

28. 18 U.S.C. § 1964 (1976) provides:

(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which

laws,²⁹ for persons injured by racketeering activity.³⁰ The final sections of RICO provide special rules governing venue and process,³¹ expedition of actions,³² and investigative proceedings for actions brought under the statute.³³ Finally, RICO's legislative history contains a mandate that the statute's provisions "shall be liberally construed to effectuate its remedial purposes."³⁴

affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b) The Attorney General may institute proceedings under this section. In any action brought by the United States under this section, the court shall proceed as soon as practicable to the hearing and determination thereof. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

(d) A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States.

See House Hearings, supra note 7, at 106; *Senate Hearings, supra* note 7, at 108, 467; *SENATE REPORT, supra* note 7, at 80-81; *Atkinson, supra* note 6, at 17-18; *Symposium, supra* note 18, at 317; *Note, supra* note 2, at 625-27; *Note, supra* note 7, at 207-22; 25 *DEPAUL L. REV.* 508 (1976).

29. *See* 18 U.S.C. § 15 (1976). *See generally Senate Hearings, supra* note 7, at 408; *SENATE REPORT, supra* note 7, at 81, 160, 214.

30. *See* note 28 *supra*.

31. *See* 18 U.S.C. § 1965 (1976).

32. *See* 18 U.S.C. § 1966 (1976).

33. *See* 18 U.S.C. § 1968 (1976). Section 1968 is modeled after the civil investigative demand procedure employed in antitrust investigations. *See SENATE REPORT, supra* note 7, at 161; *Note, supra* note 7, at 195 n.22. Section 1967 of the statute concerns public access to proceedings.

34. The Organized Crime Control Act of 1970, Pub. L. No. 91-452, Title IX, § 904, 84 Stat. 947 provides:

(a) The provisions of this title shall be liberally construed to effectuate its remedial purposes.

(b) Nothing in this title shall supersede any provision of Federal, State, or other law imposing criminal penalties or affording civil remedies in addition to those provided for in this title.

(c) Nothing contained in this title shall impair the authority of any attorney representing the United States to—

(1) lay before any grand jury impaneled by any district court of the United States any evidence concerning any alleged racketeering violation of law;

(2) invoke the power of any such court to compel the production of any evidence before any such grand jury; or

(3) institute any proceeding to enforce any order or process issued in execution of such power or to punish disobedience of any such order or process by any person.

II. THE LEGITIMATE/ILLEGITIMATE ORGANIZATION QUESTION

By holding, in *United States v. Turkette*,³⁵ that the “enterprise” term in RICO encompasses both legitimate and illegitimate organizations, the Supreme Court settled a sharply disputed question of the statute’s construction.

A. *Early Case Law*: *United States v. Parness* and *United States v. Cappelto*

In *United States v. Parness*,³⁶ a federal court of appeals first addressed the scope of the term “enterprise” as used in RICO. In *Parness*, the defendant acquired a foreign corporation with funds derived from criminal activity in the United States.³⁷ The Second Circuit, in holding that the defendant violated RICO’s section 1962(b) substantive prohibition against acquiring an interest in an enterprise through a pattern of racketeering activity,³⁸ found that the term “enterprise” includes foreign corporations.³⁹ In justifying its broad interpretation of the term “enterprise,” the court reasoned that the statutory language did not limit the scope of the term “enterprise” to domestic corporations.⁴⁰ Moreover, the court believed that RICO’s legislative history reflected specific concern about the effect of organized crime activities on the American economy.⁴¹ Because the investment of illegally derived profits in a foreign corporation does not preclude a detrimental effect on the American economy, the legislative history reflects an intent to include foreign corporations within the scope of the term “enterprise.”⁴² Thus, the *Parness* court reasoned, the term “enterprise” encompasses both domestic and foreign corporations.⁴³

The Second Circuit decision in *Parness* provided the groundwork for future expansive interpretations of the term “enterprise.” Following the lead of the Second Circuit, the Seventh Circuit in *United States v. Cappelto*⁴⁴ addressed the “enterprise” issue, but in an entirely different

35. 101 S. Ct. 2524 (1981).

36. 503 F.2d 430 (2d Cir. 1974), *cert. denied*, 419 U.S. 1105 (1975).

37. *Id.* at 438-39.

38. *See* note 19 *supra*.

39. 503 F.2d at 439.

40. *Id.*

41. *Id.* (citing Congressional Statement of Findings and Purpose, *supra* note 3).

42. 503 F.2d at 439.

43. *Id.*

44. 502 F.2d 1351 (7th Cir. 1974), *cert. denied*, 420 U.S. 925 (1975).

context. In *Cappetto* the government alleged that the defendants violated sections 1962(b) and (c) of RICO⁴⁵ by acquiring and conducting an illegal gambling operation through a pattern of racketeering activity.⁴⁶ The Seventh Circuit, addressing the scope of “enterprise,” cited *Parness* for the proposition that “enterprise” should be defined broadly.⁴⁷ The court found no language in RICO limiting the scope of the term “enterprise” to solely legitimate organizations and thus held that illegitimate organizations were included within the scope of the term “enterprise.”⁴⁸

In its zeal to bring the illegal gambling operation within RICO’s ambit, the *Cappetto* court committed two profound errors.⁴⁹ First, to support its conclusion that the term “enterprise” includes illegal organizations, the court relied upon legislative history from Title VIII of the Organized Crime Control Act, which prohibits illegal gambling operations.⁵⁰ The court, however, did not cite or refer to any statement in the legislative history of Title IX, the RICO provision under analysis, to support its holding.⁵¹ Second, the *Cappetto* court improperly reasoned that section 1962(a) of the statute applied solely to legitimate organizations, while sections 1962(b) and (c) dealt with both legitimate and illegitimate organizations.⁵² The court’s divisive interpretation of section 1962 departs from the rule of statutory interpretation that portions of a statute be construed consistently⁵³ and transgresses the statutory purpose implicitly expressed in section 1961(4) of RICO defining

45. For the text of § 1962(b), -(c), see notes 19-20 *supra*.

46. 502 F.2d at 1355.

47. *Id.* at 1358.

48. *Id.*

49. See Bradley, *supra* note 7, at 852-53; Comment, *Title IX of the Organized Crime Control Act of 1970: An Analysis of Issues Arising in Its Interpretation*, 27 DEPAUL L. REV. 89, 93-94 (1977); Note, *supra* note 7, at 201-02; Note, *Elliott v. United States: Conspiracy Law and the Judicial Pursuit of Organized Crime Through RICO*, 65 VA. L. REV. 109, 114-15 (1979).

50. 502 F.2d at 1358. The segment of legislative history cited by the *Cappetto* court came from Senate Report 91-617 and addressed the Crime Control Act of 1970, aimed at syndicated gambling. Atkinson created the same error in citing the legislative history of Title VIII for a broad interpretation of “enterprise” in Title IX. Atkinson, *supra* note 6, at 13 n.105.

51. See 502 F.2d at 1358.

52. *Id.*

53. *United States v. Sutton*, 605 F.2d 260, 269 (6th Cir. 1979), *vacated*, 642 F.2d 1001 (6th Cir. 1980); Comment, *supra* note 49, at 93-94; Note, *supra* note 7, at 201-02. See W. STATSKY, LEGISLATIVE ANALYSIS: HOW TO USE STATUTES AND REGULATIONS 100 (1975); 2A J. SUTHERLAND, STATUTORY CONSTRUCTION §§ 51.01-.03 (4th ed. 1973).

the term “enterprise.”⁵⁴

The significance of *Cappetto*’s analytical errors lies in the fact that it was the initial decision to expand the term “enterprise” beyond the scope of legitimate organizations. Thus, it opened the door for later expansive interpretations of the term.⁵⁵ Subsequent circuit court decisions addressing the scope of the term “enterprise” relied repeatedly on both *Parness* and *Cappetto* for the proposition that the term “enterprise” should be broadly construed.⁵⁶ Thus, the decisional basis upon which these cases rests is, at best, infirm. An examination of RICO’s legislative history also suggests that Congress did not intend that the term “enterprise” include illegitimate organizations.

B. RICO’s Legislative History

Post-*Cappetto* circuit court decisions holding that the term “enterprise” encompasses both legitimate and illegitimate enterprises bolstered their analyses by referring to the broad definition of “enterprise” contained in the statute,⁵⁷ portions of the Statement of Findings and Purposes of the Organized Crime Control Act relating to the Act’s broad purpose, and RICO’s mandate for liberal construction of its provisions.⁵⁸ Although these sources provide some support for the broad

54. See note 26 *supra*; Comment, *supra* note 49, at 93-94; Note, *supra* note 7, at 201-02.

55. *Cappetto* was the first court to interpret “enterprise” as including illegal organizations. *But see* United States v. Frumento, 563 F.2d 1083, 1091 n.17 (3d Cir. 1977), *cert. denied*, 434 U.S. 1072 (1978), citing United States v. Parness, 503 F.2d 430 (1974), *cert. denied*, 419 U.S. 1105 (1975), as holding that “enterprise” encompasses illegal entities. *Parness*, however, held that “enterprise” encompasses foreign corporations and it addressed the illegal “enterprise” issue only in dictum.

56. See, e.g., United States v. Rone, 598 F.2d 564, 568 (9th Cir. 1979), *cert. denied*, 445 U.S. 946 (1980); United States v. McLaurin, 557 F.2d 1064, 1073 (5th Cir. 1977), *cert. denied*, 434 U.S. 1020 (1978); United States v. Altese, 542 F.2d 104, 107 (2d Cir. 1976), *cert. denied*, 429 U.S. 1039 (1977); United States v. Hawes, 529 F.2d 472, 479 (5th Cir. 1976); United States v. Castellano, 416 F. Supp. 125, 128 (E.D.N.Y. 1975).

57. See, e.g., United States v. Rone, 598 F.2d 564, 568 (9th Cir. 1979), *cert. denied*, 445 U.S. 946 (1980); United States v. Altese, 542 F.2d 104, 106 (2d Cir. 1976), *cert. denied*, 429 U.S. 1039 (1977); United States v. Cappetto, 502 F.2d 1351, 1358 (7th Cir. 1974), *cert. denied*, 420 U.S. 925 (1975); United States v. Castellano, 416 F. Supp. 125, 129 (E.D.N.Y. 1975). See also United States v. Diecidue, 603 F.2d 535 (5th Cir. 1979) (no independent examination of RICO’s legislative history), *cert. denied*, 445 U.S. 946 (1980); United States v. Elliott, 571 F.2d 880 (5th Cir. 1978) (same), *cert. denied*, 439 U.S. 953 (1978); United States v. McLaurin, 557 F.2d 1064 (5th Cir. 1977) (same), *cert. denied*, 434 U.S. 1020 (1978).

58. See, e.g., United States v. Rone, 598 F.2d 564, 569 (9th Cir. 1979), *cert. denied*, 445 U.S. 946 (1980); United States v. Elliott, 571 F.2d 880, 897-98 n.17 (5th Cir. 1978), *cert. denied*, 439 U.S.

interpretation of the term "enterprise," their persuasive efficacy pales against an examination of RICO's legislative history.

RICO's legislative history reveals specific congressional concern with the ruinous economic consequences of organized crime's continued infiltration of *legitimate* business organizations.⁵⁹ In addition, the history contains express statements made by Senator McClellan, the original sponsor of the Organized Crime Control Act, reflecting an intent to limit the scope of the term "enterprise" to legitimate businesses.⁶⁰ Statements in the House⁶¹ and Senate,⁶² recommendations to Congress by the Justice Department,⁶³ and statements of dissenting members of Congress⁶⁴ further reflect the intent to limit the application of RICO to infiltration by organized crime into legitimate enterprises.

Although the legislative history lacks explicit refutation of the proposition that a Title IX enterprise encompasses illegitimate organizations, the repeated references to legitimate business enterprises reflect congressional concurrence in the conclusion that the term "enterprise" referred only to legitimate organizations.⁶⁵ RICO's legislative history thus indicates that the statute is aimed at the infiltration by organized crime and racketeering into legitimate organizations operating in interstate commerce.

Investigations of organized crime and racketeering found that organ-

953 (1978); *United States v. Altese*, 542 F.2d 104, 106 (2d Cir. 1976), *cert. denied*, 429 U.S. 1039 (1977). See also notes 3 & 4 *supra*.

59. See, e.g., *House Hearings*, *supra* note 7, at 77-80; *Senate Hearings*, *supra* note 7, at 387, 404-08; HOUSE REPORT, *supra* note 7, at 35, 39, 56-57; SENATE REPORT, *supra* note 7, at 76-83. See generally Bradley, *supra* note 7, at 837-45; Note, *supra* note 7, at 196-206; Note, *supra* note 49, at 109.

60. See 116 CONG. REC. 585, 591 (1970); *House Hearings*, *supra* note 7, at 106. See also McClellan, *supra* note 7, at 141, 144.

61. See 116 CONG. REC. 35196-97, 35206, 35260, 35295, 35318, 35361 (1970); *House Hearings*, *supra* note 7, at 77-80, 188; HOUSE REPORT, *supra* note 7, at 39, 56-57.

62. See 116 CONG. REC. 591, 602-03, 607, 953 (1970); SENATE REPORT, *supra* note 7, at 76-83, 159, 211, 214.

63. See *Senate Hearings*, *supra* note 7, at 404-08.

64. See 116 CONG. REC. 591, 602-03, 607, 953 (1970) (dissenters in Senate); *id.* at 35196-97, 35200, 35206, 35295, 35318, 35361 (dissenters in House); *Senate Hearings*, *supra* note 7, at 489-92 (statement by the American Civil Liberties Union); HOUSE REPORT, *supra* note 7, at 185-86 (dissenting views of Reps. Conyers, Mikva, and Ryan). See also SENATE REPORT, *supra* note 7, at 211, 214 (concurring view of Senator Scott).

65. Only two brief references in the legislative history of RICO concern the statute's application to legitimate and illegitimate organizations. See 116 CONG. REC. 844 (1970) (discussion among Sens. Magnuson, McClellan, and Hruska); *id.* at 35328 (remark by Rep. Meskill); Note, *supra* note 7, at 206 n.75.

ized crime employs three methods to attain ownership, control, and operation of legitimate organizations.⁶⁶ First, after establishing a financial base with illegally obtained funds, the racketeer then invests the funds in legitimate enterprises. Second, persons outside of a legitimate enterprise gain control of the enterprise through racketeering methods, such as extortion and the illegal sale, manipulation, and ownership of a shareholder interest. Third, inside employees, associates of trade groups or union members, use racketeering methods to conduct the legitimate business through illegitimate means, eventually corrupting the enterprise.

RICO's substantive prohibitions directly parallel the investigative findings. Section 1962(a) prohibits the legitimate acquisition of an interest in a legitimate organization with illegally obtained funds.⁶⁷ Section 1962(b) prohibits the illegal acquisition of an interest in or control of an enterprise through established practices,⁶⁸ and subsection (c) prohibits illegal operation of an enterprise through defined racketeering activities.⁶⁹ The parallels between the legislative findings of the methods used to infiltrate legitimate organizations and the plain wording of RICO's substantive prohibitions reinforce the argument that section 1962 represents an integrated scheme dealing with organized crime's infiltration of legitimate organizations.⁷⁰

Moreover, Section 848 of the Drug Abuse Prevention and Control Act,⁷¹ enacted shortly after RICO, confirms that Congress knew how to draft legislation prohibiting illegal or criminal enterprises. Section 848 directly addresses continuing criminal enterprises involving traffic in narcotics.⁷² If the term "enterprise" in RICO is broadly interpreted, RICO effectively absorbs the continuing criminal enterprise section of

66. See *United States v. Turkette*, 632 F.2d 896, 900 (1st Cir. 1980), *rev'd on other grounds*, 101 S. Ct. 2524 (1981); SENATE REPORT, *supra* note 7, at 76-77; Bradley, *supra* note 7, at 842-45.

67. See note 18 *supra*.

68. See note 19 *supra*.

69. See note 20 *supra*.

70. See *United States v. Turkette*, 632 F.2d 896, 900 (1st Cir. 1980), *rev'd*, 101 S. Ct. 2524 (1981).

71. 21 U.S.C. § 848 (1976).

72. 21 U.S.C. § 848(b) (1976) provides:

(b) For purposes of subsection (a) of this section, a person is engaged in a continuing criminal enterprise if—

(1) he violates any provision of this subchapter or subchapter II of this chapter the punishment for which is a felony, and

(2) such violation is a part of a continuing series of violations of this subchapter or subchapter II of this chapter—

the Act.⁷³

C. Rules of Statutory Construction

Courts broadly interpreting the term "enterprise" disregard several basic maxims of statutory construction⁷⁴ available to guide courts in proper statutory analysis.⁷⁵ One such maxim counsels that related statutes, or portions thereof, be read *in pari materia*, or in harmony.⁷⁶ Application of the rule to RICO requires that the term "enterprise" be interpreted consistently throughout sections 1962(a), (b), and (c).⁷⁷ In *United States v. Capetto*,⁷⁸ however, the court violated the rule by reading the term "enterprise" restrictively in section 1962(a) but broadly in sections 1962(b) and (c).⁷⁹

A second principle of statutory construction, *ejusdem generis*,⁸⁰ counsels that broad statutory language be construed in light of prior specific language so that the general terms encompass only objects similar in nature to the objects of the specific terms.⁸¹ Application of the doctrine to the statutory definition of "enterprise" in section 1961(4)⁸² requires

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- (A) which are undertaken by such person in concern with five or more other persons with respect to whom such person occupies a position of organizer, a supervisory position, or any other position of management, and
(B) from which such person obtains substantial income or resources.

73. *United States v. Turkette*, 632 F.2d 896, 902-03 (1st Cir. 1980), *rev'd*, 101 S. Ct. 2524 (1981). See 21 U.S.C. § 848 (1976).

74. See 2A J. SUTHERLAND, *supra* note 53, § 45.04, stating that the words "construction" and "interpretation" as describing the process of judicial behavior in determining legislative intent, can be used interchangeably. The words "construction" and "interpretation" are used interchangeably throughout this text.

75. See generally *United States v. Sutton*, 605 F.2d 260 (6th Cir. 1979), *vacated*, 642 F.2d 1001 (6th Cir. 1980); Comment, *supra* note 49, at 93-94; Note, *supra* note 7, at 201-02; Note, *supra* note 48, at 117.

76. See *United States v. Sutton*, 605 F.2d 260, 269 (6th Cir. 1979), *vacated*, 642 F.2d 1001 (6th Cir. 1980); 2A J. SUTHERLAND, *supra* note 53, §§ 51.01-03.

77. See note 18-21 *supra*.

78. 502 F.2d 1351 (7th Cir. 1974), *cert. denied*, 420 U.S. 925 (1975).

79. *Id.* at 1358. See notes 51-53 *supra* and accompanying text.

80. *United States v. Insa*, 496 F.2d 204 (5th Cir. 1974).

[T]he doctrine of *ejusdem generis* warns against expansively interpreting broad language which immediately follows narrow and specific terms. . . . [It] counsels courts to construe the broad in light of the narrow, in a common-sense recognition that general and specific words, when present together, are associated with and take color from each other.

Id. at 206. See 2A J. SUTHERLAND, *supra* note 53, § 47.17. See also *United States v. Altese*, 542 F.2d 104, 107 (2d Cir. 1976) (Van Graafeiland, J., dissenting), *cert. denied*, 429 U.S. 1039 (1977).

81. W. STRATSKY, *supra* note 53, at 100; 2A J. SUTHERLAND, *supra* note 53, § 47.17, at 103.

82. See note 26 *supra*.

that the general language "other legal entity" and "group of individuals associated in fact although not a legal entity" be interpreted in light of the specific terms "partnership" and "corporation."⁸³ Because the specific terms denote only legal entities, the general terms, "other legal entity" and "group of individuals associated in fact although not a legal entity," must refer only to organizations with some legal existence or purpose.⁸⁴ Courts expansively interpreting the term "enterprise" have failed to recognize the doctrine of *ejusdem generis*.⁸⁵

RICO's mandate for liberal construction, directing that the statute "be liberally construed to effectuate its remedial purposes,"⁸⁶ transgresses the traditional rule requiring strict construction of criminal statutes and resolution of ambiguities in favor of lenity.⁸⁷ Courts favoring an interpretation of the term "enterprise" that encompasses illegitimate organizations frequently rely on the direction for liberal construction as support.⁸⁸

Arguments for narrow interpretation of "enterprise," on the other hand, focus on RICO's legislative history and the effects of a liberal construction of RICO. The legislative history reveals that the statute's remedial purpose is the elimination of the influence of organized crime on legitimate economic organizations.⁸⁹ Moreover, due process requires that criminal statutes be written to give fair notice of the conduct

83. *Id.*

84. See Comment, *supra* note 49, at 95-96; Note, *supra* note 49, at 119-20. See also *United States v. Altese*, 542 F.2d 104, 107 (2d Cir. 1976) (Van Graafeiland, J., dissenting), *cert. denied*, 429 U.S. 1039 (1977).

85. See, e.g., *United States v. Altese*, 542 F.2d 104 (2d Cir. 1976), *cert. denied*, 429 U.S. 1039 (1977).

86. See note 34 *supra*.

87. See *Bifulco v. United States*, 447 U.S. 381, 387 (1980); *Rewis v. United States*, 401 U.S. 808, 812 (1971); *United States v. Bell*, 349 U.S. 81, 83 (1955); 3 J. SUTHERLAND, *supra* note 53, §§ 59.03-06. See also *United States v. Turkette*, 632 F.2d 896, 905 (1st Cir. 1980), *rev'd*, 101 S. Ct. 2524 (1981); *United States v. Anderson*, 626 F.2d 1358, 1370 (8th Cir. 1980).

88. See, e.g., *United States v. Sutton*, 605 F.2d 260 (6th Cir. 1979), *vacated*, 642 F.2d 1001 (6th Cir. 1981); *United States v. Rone*, 598 F.2d 564, 569 (9th Cir. 1979), *cert. denied*, 445 U.S. 946 (1980); *United States v. Elliott*, 571 F.2d 880, 897-98 n.17 (5th Cir.), *cert. denied*, 439 U.S. 953 (1978); *United States v. Altese*, 542 F.2d 104, 106 (2d Cir. 1976), *cert. denied*, 429 U.S. 1039 (1977); *United States v. Cappetto*, 502 F.2d 1351, 1358 (7th Cir. 1974), *cert. denied*, 420 U.S. 925 (1975); *United States v. Thevis*, 474 F. Supp. 134, 139 (N.D. Ga. 1979); *United States v. Castellano*, 416 F. Supp. 125, 129 (E.D.N.Y. 1975). See also *United States v. Brown*, 555 F.2d 407, 415 (5th Cir. 1977), *cert. denied*, 435 U.S. 904 (1978).

89. See notes 59-64 *supra* and accompanying text.

they prohibit.⁹⁰ The liberal construction mandate directly conflicts with due process when applied to expand RICO beyond the scope of penal prohibitions apparent on the face of the statute.⁹¹

A plain reading of RICO's prohibitive provisions as a whole suggests a narrow interpretation of the term "enterprise." If the term "enterprise" is read to include wholly illegitimate organizations, the statutory provisions for criminal forfeiture⁹² and civil reform of corrupted organizations⁹³ cannot apply when the enterprise is wholly illegitimate.⁹⁴ When a legitimate organization is corrupted by criminal activity and racketeering practices, the criminal forfeiture and civil reform sections of RICO apply to purge the organization of the criminal elements so that it can continue to function as a rehabilitated and wholly legal economic entity. When an enterprise is wholly illegitimate, however, the criminal forfeiture and civil reform provisions are inapplicable to restructure or rehabilitate the enterprise. An enterprise that is wholly illegitimate must cease to exist after prosecution. The statute's criminal and civil remedial provisions cannot be effectuated when the enterprise is wholly illegitimate because after prosecution of such an enterprise nothing remains to rehabilitate or reform. Thus, reading the term "enterprise" to include other than legitimate organizations is anomalous.⁹⁵ Such a divisive interpretation of the statute violates the notion of statutory construction requiring that statutes be read as an integral whole.⁹⁶

D. *The Turkette Decision*

In *United States v. Turkette*⁹⁷ the Supreme Court, rejecting each of the arguments for a narrow reading of the "enterprise" element, held that the term encompasses both legitimate and illegitimate organizations.⁹⁸

Preliminarily, the Court looked to the language of the statute, noting

90. U.S. CONST. art. I, § 8, cl. 3; *id.*, amend. V. See *United States v. Anderson*, 626 F.2d 1358, 1369 (8th Cir. 1980).

91. See *United States v. Anderson*, 626 F.2d 1358, 1370 (8th Cir. 1980); *United States v. Sutton*, 605 F.2d 260, 266 (6th Cir. 1979), *vacated*, 642 F.2d 1001 (6th Cir. 1980).

92. 18 U.S.C. § 1963 (1970).

93. 18 U.S.C. § 1964 (1970).

94. Note, *supra* note 49, at 119.

95. *Id.*

96. *Id.* See 2A J. SUTHERLAND, *supra* note 53, § 51.01-.03.

97. 101 S. Ct. 2524 (1981).

98. *Id.* at 2533-34.

that an unambiguous statute was conclusive in the absence of clearly expressed legislative input to the contrary.⁹⁹ The Court concluded that the enterprise definition—"any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity"¹⁰⁰—was unambiguous. In the absence of any explicit attempt to restrict the definition to legal organizations, the Court found that it clearly extended to both legitimate and illegitimate groups.¹⁰¹

The *Turkette* Court believed that RICO's legislative history also mandated this interpretation of the enterprise requirement. Although the Court agreed that the statute's main concern was the infiltration of legitimate businesses by organized crime,¹⁰² it did not believe that this suggested a narrower interpretation.¹⁰³ Instead, the Court stated, Congress intended to protect legitimate businesses by striking at the heart of organized crime, whether legitimate or not.¹⁰⁴ Moreover, the Court relied upon the statutory language, which it believed clearly supported a broad interpretation as "the most reliable evidence of [Congressional] intent."¹⁰⁵

The *Turkette* decision rejected the *ejusdem generis* rationale for a narrow reading of the enterprise element.¹⁰⁶ First, the Court noted that *ejusdem generis* was inapplicable to the construction of unambiguous statutory language.¹⁰⁷ Second, the Court suggested that even if *ejusdem generis* were applied, it would not require a narrow interpretation of the statute.¹⁰⁸

99. *Id.* at 2527.

100. 18 U.S.C. § 1961(4) (1976).

101. *United States v. Turkette*, 101 S. Ct. 2524, 2527 (1981).

102. *Id.* at 2532.

103. *Id.* at 2532-33.

104. *Id.*

105. *Id.* at 2533.

106. *Id.* at 2527-28. See generally notes 80-85 *supra* and accompanying text.

107. *Id.* at 2528.

108. *Id.* Thus, the Court stated:

Section 1961(4) describes two categories of associations that come within the purview of the "enterprise" definition. The first encompasses organizations such as corporations and partnerships, and other "legal entities." The second covers "any union or group of individuals associated in fact although not a legal entity." . . . Each category describes a separate type of enterprise to be covered by the statute—those that are recognized as legal entities and those that are not. The latter is not a more general description of the former. The second category itself not containing any specific enumeration that is followed by a general description, *ejusdem generis* has no bearing on the meaning to be attributed to that part of § 1961(4).

Similarly, the Court dismissed the argument urging lenity in the construction of criminal statutes¹⁰⁹ as inapplicable when the statutory language is clear.¹¹⁰ Moreover, noted the Court, the rule of lenity requires not that statutes be given their narrowest meaning but only that they be given a fair construction according to Congressional intent.¹¹¹

Finally, the Court rejected the suggestion that the criminal forfeiture and civil reform provisions of RICO, which apply only to legitimate organizations, require a narrow reading of the "enterprise" term.¹¹² The Court said that the provision would be useful in eliminating organized crime in both legitimate and illegitimate organizations.¹¹³ Moreover, the Court stated that even if some of the civil remedies were useful only in the context of legitimate organizations, there would be no inference that Congress intended to so limit the statute.¹¹⁴ Instead, the Court reasoned, Congress might have intended to provide for civil remedies only when they were useful.¹¹⁵

The *Turkette* decision's expansive definition of the term "enterprise" does find support in RICO's statutory language and mandate for liberal construction.¹¹⁶ Although this interpretation gives little weight to the statute's legislative history¹¹⁷ and well-settled principles of statutory construction,¹¹⁸ it does not represent a critical expansion of the statute.¹¹⁹ Thus, under the *Turkette* interpretation of "enterprise," if a group of individuals participates in and receives funds from an illegal narcotics distribution operation and uses the proceeds from the illegal operation to acquire an interest in an illegal gambling operation, it violates RICO. The individuals used funds derived from a pattern of racketeering activity to acquire an interest in an illegal enterprise, a

Id. (footnote omitted). The court went on to note that *ejusdem generis* would not aid *Turkette* even if the more general language of the second clause were limited by the specific language of the first. Because each of the specific examples, such as individuals and partnerships, were entities that could "act totally beyond the pale of the law," it would not limit the general language inclusion of an illegitimate organization. *Id.* at 2528 n.4.

109. *Id.* at 2531 n.10. See generally note 87 *supra* and accompanying text.

110. 101 S. Ct. at 2531 n.10.

111. *Id.*

112. *Id.* at 2529-30.

113. *Id.* at 2530.

114. *Id.*

115. *Id.*

116. See notes 95-115 *supra* and accompanying text.

117. See notes 56-72 *supra* and accompanying text.

118. See notes 73-86 *supra* and accompanying text.

119. See Bradley, *supra* note 7, at 854-55.

violation of section 1962(b). The “enterprise” is the illegal gambling operation that exists separate and apart from the underlying racketeering activity of the narcotics distribution operation.

III. THE ENTERPRISE PATTERN OF RACKETEERING PROBLEM

Most courts, seemingly unaware of a more serious problem of construction presented by the RICO “enterprise” issue, have expanded RICO’s scope far beyond that intended by Congress by concluding that individuals associated in fact only to commit a pattern of racketeering activity are an “enterprise” for purposes of RICO.¹²⁰ In the above example, if the individuals did not use the proceeds of the narcotics distribution operation to acquire an interest in anything, but merely associated to conduct the illegal distribution operation, the enterprise element of the offense would seem to have disappeared. The individuals merely associated to commit a pattern of racketeering activity, that is, illegal acts of drug distribution.

Many federal courts, however, implicitly have concluded on the basis of facts similar to those in the example that individuals’ association to commit illegal racketeering acts is an enterprise for purposes of RICO.¹²¹ Such analysis defines the “enterprise” in terms of the defendants’ association to commit a pattern of racketeering activity when no enterprise in fact exists.¹²² An examination of cases addressing the “enterprise” issue illustrates the confusion engendered when courts implicitly conclude that individuals associated in fact only to commit a pattern of racketeering activity are an enterprise for purposes of RICO.

In *United States v. Aleman*,¹²³ the Seventh Circuit found that a series of robberies committed by the defendants established a RICO “pattern of racketeering activity.”¹²⁴ The court then held, on the basis of

120. See, e.g., *United States v. Whitehead*, 618 F.2d 523 (4th Cir. 1980); *United States v. Aleman*, 609 F.2d 298 (7th Cir. 1979), *cert. denied*, 445 U.S. 946 (1980); *United States v. Diecidue*, 603 F.2d 535 (5th Cir. 1979), *cert. denied*, 445 U.S. 946 (1980); *United States v. Rone*, 598 F.2d 564 (9th Cir. 1979), *cert. denied*, 445 U.S. 946 (1980); *United States v. Elliott*, 571 F.2d 880 (5th Cir.), *cert. denied*, 439 U.S. 953 (1978); *United States v. Altese*, 542 F.2d 104 (2d Cir. 1976), *cert. denied*, 429 U.S. 1939 (1977); *United States v. Cappetto*, 502 F.2d 1351 (7th Cir. 1974), *cert. denied*, 420 U.S. 925 (1975). See Bradley, *supra* note 7, at 853-55.

121. See cases cited in note 120 *supra*.

122. See Bradley, *supra* note 7, at 853-55. See also *United States v. Anderson*, 626 F.2d 1358, 1368-72 (8th Cir. 1980).

123. 609 F.2d 298 (7th Cir. 1979), *cert. denied*, 445 U.S. 946 (1980).

124. *Id.* at 301.

RICO's broad language and decisions of other circuits, that the term "enterprise" encompasses illegitimate organizations.¹²⁵ Finally, the court implicitly found that the defendants' association with one another in committing the pattern of racketeering activity constituted an "enterprise" under RICO.¹²⁶ Proof of the defendants' association in committing the predicate racketeering acts or pattern of racketeering activity established proof of the enterprise.

The reasoning implicit in *Aleman*, employed similarly by other federal courts addressing the scope of the term "enterprise,"¹²⁷ reads the enterprise element out of RICO, and the statute consequently becomes a mere proscription against patterns of a racketeering. Neither RICO's legislative history¹²⁸ nor its statutory language¹²⁹ supports an interpretation that defines the existence of an enterprise solely on the basis of the defendants' racketeering acts. Rather, the language in the substantive and definitional portions of the statute contemplates the existence of an enterprise separate and distinct from the underlying criminal and racketeering activities.¹³⁰ Defendants must invest in, maintain an interest in, acquire control of, or be employed by or associated with an enterprise, whether legal or illegal, that is distinct from the defendants' mere association for racketeering purposes.¹³¹

Several federal courts have come close to disentangling the fundamental issue of whether defendants associated in fact only to commit racketeering acts constitute an enterprise from the question of the legitimacy or illegitimacy of an enterprise under RICO. The Sixth Circuit in *United States v. Sutton*,¹³² a panel decision later withdrawn and reversed by the court en banc, focused on the former question.¹³³ The court realized that a definition of "enterprise" including defendants associated only to commit racketeering acts effectively eliminates the statutory enterprise element and the necessity of proving the existence of an "enterprise."¹³⁴ The court reasoned that common sense and the

125. *Id.* at 304-05.

126. *Id.*

127. See cases cited in note 120 *supra*.

128. See notes 3, 28 & 59 *supra* and accompanying text.

129. See notes 18-21 & 23-26 *supra* and accompanying text.

130. *Id.*

131. *Id.*

132. 605 F.2d 260 (6th Cir. 1979), *vacated*, 642 F.2d 1001 (6th Cir. 1980).

133. *Id.*

134. *Id.* at 265.

plain meaning rule require a construction of the term “enterprise” defining an entity “larger than and conceptually distinct from ‘any pattern of racketeering activity.’”¹³⁵ Although the bulk of the *Sutton* opinion focused on whether racketeering acts alone could satisfy RICO’s “enterprise” element, the court’s holding was limited to the more traditional legitimate/illegitimate dispute.¹³⁶ The *Sutton* holding, therefore, does not provide a direct answer to the question of whether defendants associated in fact only to commit racketeering acts constitute an enterprise under RICO.

The Eighth Circuit directly addressed the issue in *United States v. Anderson*.¹³⁷ The *Anderson* court began by addressing the narrow issue of whether the term “enterprise” encompasses an illegal association proved only by facts that also establish the predicate pattern of racketeering activity.¹³⁸ Reasoning that a definition of “enterprise” relying solely on the existence of acts that form the pattern of racketeering activity would alter the fundamental elements of a RICO offense,¹³⁹ the *Anderson* court found that the term “enterprise” “must signify an association substantially different from the acts that form the pattern of racketeering activity.”¹⁴⁰ The legislative history of RICO,¹⁴¹ the organization and structure of the Organized Crime Control Act,¹⁴² fundamental rules of statutory interpretation,¹⁴³ and the severe federal intrusion on state criminal jurisdiction if “enterprise” were defined synonymously with the defendants’ association to commit racketeering activities¹⁴⁴ convinced the court that proof of an enterprise cannot rest solely on proof of an association to commit the crimes that form a pattern of racketeering activity. Rather, the term “enterprise” encompassed only “an association having an ascertainable structure which exists for the purpose of maintaining operations directed toward an economic goal that can be defined apart from the commission of the predicate acts constituting the ‘pattern of racketeering activity.’”¹⁴⁵

135. *Id.* at 266.

136. *Id.* at 270; Bradley, *supra* note 7, at 854.

137. 626 F.2d 1358 (8th Cir. 1980).

138. *Id.* at 1365.

139. *Id.*

140. *Id.*

141. *Id.* at 1371-72.

142. *Id.* at 1370.

143. *Id.* at 1366-67.

144. *Id.* at 1370-72.

145. *Id.* at 1372. The holding of the *Anderson* court is specific:

Thus, the *Anderson* court's analysis successfully distinguished the issue of whether defendants associated only to commit racketeering acts constitute an "enterprise" from the issue of the legitimacy or illegitimacy of an enterprise for RICO purposes. By focusing on the necessity of an economic association existing separate and apart from the racketeering activity rather than on the legality or illegality of the enterprise, the court addressed an issue fundamental to the proper application of the statute.¹⁴⁶

After the Eighth Circuit decision in *Anderson*, the First Circuit decision in *United States v. Turkette*¹⁴⁷ repeated the analytical error that the Sixth Circuit committed in *Sutton*. In *Turkette*, the defendants allegedly conducted the affairs of an enterprise affecting interstate commerce through a pattern of racketeering in violation of section 1962(c).¹⁴⁸ The *Turkette* court properly reasoned that a broad interpretation of the term "enterprise" to include defendants associated to commit racketeering acts would render that term wholly synonymous with the statutory definition of "pattern of racketeering activity."¹⁴⁹ The court concluded, however, that remedying the redundancy created by a broad interpretation of the term "enterprise" required limiting the definition of "enterprise" to legitimate organizations.¹⁵⁰

The Supreme Court's decision in *Turkette*,¹⁵¹ of course, repudiated the First Circuit's attempt to limit the enterprise requirement to legitimate groups.¹⁵² On the more difficult question of whether an enterprise could be established by proof of a pattern of racketeering activity alone, though, the Court was more ambiguous.

We hold that Congress intended that the phrase "a group of individuals associated in fact although not a legal entity," as used in the definition of the term "enterprise" in section 1961(4), to encompass only an association having an ascertainable structure which exists for the purpose of maintaining operations directed toward an economic goal that has an existence that can be defined apart from the commission of the predicate acts constituting the "pattern of racketeering activity."

Id. The court then distinguished the holding of the Sixth Circuit in *Sutton*: "We differ from [the *Sutton*] holding only to the extent that we do not rest our holding on the word 'legitimate' but rather on the need for a discrete economic association existing separately from the racketeering activity." *Id.* (citing Bradley, *supra* note 7, at 854-55).

146. 626 F.2d 1358, 1372 (8th Cir. 1980).

147. 632 F.2d 896 (1st Cir. 1980), *rev'd*, 101 S. Ct. 2524 (1981).

148. *Id.* at 898.

149. *Id.* at 899.

150. *Id.*

151. 101 S. Ct. 2524 (1981).

152. See notes 95-115 *supra* and accompanying text.

Although the Court noted that the enterprise was an element distinct from the pattern of racketeering, requiring separate proof, it also indicated that the evidence required to prove both the existence of an enterprise and a pattern of racketeering activity would in some cases coalesce.¹⁵³ In this respect the Court's opinion may indicate that the enterprise can in some cases be proven through evidence of a pattern of racketeering activity. Moreover, although the government conceded that "proof of a pattern of racketeering activity in itself would not be sufficient to establish the existence of an enterprise,"¹⁵⁴ the Court felt obliged to explain its decision "even if that were not the case."¹⁵⁵ Thus, the Supreme Court failed to resolve definitely the issue in *Turkette*.

The implicit conclusion that defendant's pattern of racketeering activity is an enterprise eliminates the government's burden of proving the existence of an enterprise. Once the government demonstrates the existence of a pattern of racketeering under section 1961(5), it need only point to the defendants' association in committing the pattern of illegal acts in order to prove the enterprise. Thus, in *United States v. Rone*,¹⁵⁶ the Ninth Circuit sustained the government's theory that defendants' association in a wide range of unlawful activity, including murder and extortion,¹⁵⁷ constituted both the "pattern of racketeering activity"¹⁵⁸ and the "enterprise."¹⁵⁹

The operation and structure of the Organized Crime Control Act¹⁶⁰ warns against an interpretation of the term "enterprise" that includes defendants' mere association to commit a pattern of crimes. Title VIII of the Act extends federal criminal jurisdiction to illegal gambling operations that comprise five or more persons and that either continue over a specified period of time or gross revenues above a prescribed amount.¹⁶¹ These conditions on the size and scope of illegal gambling operations restrict federal jurisdiction over illegal gambling organiza-

153. *United States v. Turkette*, 101 S. Ct. 2524, 2528-29 (1981).

154. *Id.* at 2529 n.5.

155. *Id.*

156. 598 F.2d 564 (9th Cir. 1979), *cert. denied*, 445 U.S. 946 (1980).

157. *Id.* at 567.

158. *Id.* at 566-67.

159. *Id.* at 568-69.

160. Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 922 (1970) (codified in scattered sections of 7, 11, 15-16, 18-19, 21, 28-29, 33, 42, 45-47, 49-50 U.S.C.). *See* [1970] U.S. CODE CONG. & AD. NEWS 4007; note 100 *supra* and accompanying text.

161. 18 U.S.C. § 1955 (1976). Title VIII of the Act proscribes gambling businesses illegal under state law, that involve five or more persons, and are either in operation for at least 30 days

tions to those of substantial size.¹⁶²

Defining the RICO enterprise requirement in terms of the defendants' association to commit illegal acts effectively circumvents the Title VIII restrictions on the size and scope of gambling operations.¹⁶³ Under RICO, the government can prosecute any two illegal gambling acts occurring within ten years of each other and affecting interstate commerce. The defendants' series of illegal gambling acts forms the pattern of racketeering activity, and the enterprise is the illegal organization consisting of the defendants' association in committing the illegal gambling acts.¹⁶⁴ Because RICO does not limit the size or scope of the enterprise, relatively insubstantial gambling operations qualify as an enterprise under the statute, and RICO is thus used to avoid the Title VIII conditions on the size and scope of gambling operations. Congress, however, did not intend that RICO's federal jurisdiction and sizeable criminal penalties be extended to small scale illegal gambling operations.¹⁶⁵ Rather, the size and scope provisions of Title VIII of the Organized Crime Control Act reflect that Congress intended to subject only substantial gambling organizations to federal criminal jurisdiction.¹⁶⁶

or gross more than \$2,000 a day. See [1970] U.S. CODE CONG. & AD. NEWS 4003, 4009, 4028-32; McClellan, *supra* note 7, at 133-40.

162. See, e.g., *United States v. Ianelli*, 420 U.S. 770, 787 (1975): "Major gambling activities were a principal focus of congressional concern. Large-scale gambling enterprises were seen to be both a substantive evil and a source of funds for other criminal conduct." *Id.* (citing SENATE REPORT, *supra* note 7, at 71-73).

163. *United States v. Turkette*, 632 F.2d 869, 902 (1st Cir. 1980), *rev'd on other grounds*, 101 S. Ct. 2524 (1981); *United States v. Anderson*, 626 F.2d 1358, 1370 (8th Cir. 1980); *United States v. Moeller*, 402 F. Supp. 49, 59 (D. Conn. 1975), *overruled*, *United States v. Altese*, 542 F.2d 104 (1976), *cert. denied*, 429 U.S. 1939 (1977). See Bradley, *supra* note 7, at 856-57; Comment, *supra* note 49, at 101; Note, *supra* note 49, at 120-21.

164. See, e.g., *United States v. Cappetto*, 502 F.2d 1351, 1358 (7th Cir. 1974), *cert. denied*, 420 U.S. 925 (1975).

165. Application of severe criminal penalties that in many cases exceed the penalties for the individual crimes underlying the RICO violation to the small-time operator engaged in petty gambling, drug dealing, or extortion subjects the defendant to cruel and unusual punishment in violation of the eighth amendment. The Sixth Circuit held in *Downey v. Perini*, 518 F.2d 1288 (6th Cir. 1975), *vacated and remanded*, 423 U.S. 993 (1975), that "a sentence which is disproportionate to the crime for which it is administered may be held to violate the Eighth Amendment solely because of the length of imprisonment imposed." *Id.* at 1290. See Atkinson, *supra* note 6, at 15-17.

166. See *Ianelli v. United States*, 420 U.S. 770, 787-90 (1975) (§ 1955 requirements on size and scope of gambling operations reflect an intent to limit federal intervention to cases in which federal interests are substantially implicated, leaving to local law enforcement efforts the prosecution of small-scale gambling activities).

Several issues of constitutional magnitude arise if individuals associated in fact only to commit a pattern of racketeering activity constitute a RICO "enterprise."¹⁶⁷ Fundamental among these concerns is that a broad interpretation of "enterprise" leads to federal usurpation of state criminal jurisdiction over small-scale criminal activities.¹⁶⁸

RICO's legislative history reveals specific concern with organized crime's infiltration of legitimate business enterprises.¹⁶⁹ It is this concern that motivated Congress to extend federal criminal jurisdiction to enterprises operating in interstate commerce. Where the enterprise element is eliminated from the statute and the term "enterprise" is rendered redundant of patterns of racketeering activity, the commission of any two criminal acts within ten years of each other, punishable under state law by imprisonment for more than one year, subjects the criminal behavior to prosecution under RICO. Under this broad interpretation of the term "enterprise" federal criminal jurisdiction is extended to practically every criminal activity affecting interstate commerce. Because the offenses encompassed by the phrase "racketeering activity"

167. RICO has been the subject of various constitutional challenges: (1) vagueness, *see* *United States v. Aleman*, 609 F.2d 298, 305 (7th Cir. 1979), *cert. denied*, 445 U.S. 946 (1980); *United States v. Hawes*, 529 F.2d 472, 479 (5th Cir. 1976); *United States v. Campanale*, 518 F.2d 352, 364 (9th Cir. 1975), *cert. denied*, 432 U.S. 1050 (1976); *United States v. Parness*, 503 F.2d 430, 440-42 (2d Cir. 1974), *cert. denied*, 419 U.S. 1105 (1975); *United States v. Cappetto*, 502 F.2d 1351, 1357 (7th Cir. 1974), *cert. denied*, 420 U.S. 925 (1975); *United States v. Castellano*, 416 F. Supp. 125, 128 (E.D.N.Y. 1975); *United States v. Stofsky*, 409 F. Supp. 609, 612-13 (S.D.N.Y. 1973), *aff'd*, 527 F.2d 237 (2d Cir. 1975), *cert. denied*, 429 U.S. 819 (1976); *United States v. Scalzitti*, 408 F. Supp. 1014, 1015-16 (W.D. Pa. 1975); *United States v. White*, 386 F. Supp. 882, 883-84 (E.D. Wis. 1974); (2) lack of authority under commerce clause and invasions into state power, *see* *United States v. Cappetto*, 502 F.2d 1351, 1356 (7th Cir. 1974), *cert. denied*, 420 U.S. 925 (1975); *United States v. Castellano*, 416 F. Supp. 125, 131 (E.D.N.Y. 1975); *cf.* *United States v. Fineman*, 434 F. Supp. 189, 195 (E.D. Pa. 1977) (minimal impact on interstate commerce sufficient); (3) violation of prohibition against ex post facto laws and avoidance of statutes of limitations, *see* *United States v. Brown*, 555 F.2d 407, 416-17 (5th Cir. 1977), *cert. denied*, 435 U.S. 904 (1978); *United States v. Campanale*, 518 F.2d 352, 364-65 (9th Cir. 1975), *cert. denied*, 423 U.S. 1050 (1976); *United States v. Field*, 432 F. Supp. 55, 59 (S.D.N.Y. 1977); *United States v. Mandel*, 415 F. Supp. 997, 1022 (D. Md. 1976); (4) double jeopardy and multiplicity, *see* *United States v. Frumento*, 563 F.2d 1083, 1088-89 (3d Cir. 1977), *cert. denied*, 434 U.S. 1072 (1978); *United States v. Hansen*, 422 F. Supp. 430, 433-34 (E.D. Wis. 1976); *United States v. Stofsky*, 409 F. Supp. 609, 617-18 (S.D.N.Y. 1973), *aff'd*, 527 F.2d 237 (2d Cir. 1975), *cert. denied*, 429 U.S. 819 (1976); *United States v. White*, 386 F. Supp. 882, 884 (E.D. Wis. 1974); (5) violation of prohibition against cruel and unusual punishment, *see* *United States v. Aleman*, 609 F.2d 298, 305 (7th Cir. 1979), *cert. denied*, 445 U.S. 946 (1980). *See generally* Atkinson, *supra* note 6, at 3-9.

168. *See generally* *United States v. Anderson*, 626 F.2d 1358, 1370-71 (8th Cir. 1980); Comment, *supra* note 49, at 100-01; Note, *supra* note 48, at 120-21.

169. *See* notes 59-64 *supra* and accompanying text.

include crimes punishable under state law, federal jurisdiction is extended into traditional fields of state law enforcement. A broad interpretation of the term "enterprise" that includes defendants associated in fact only to commit a pattern of racketeering activities is a usurpation of state criminal jurisdiction. Neither RICO's language¹⁷⁰ nor its legislative history¹⁷¹ contemplates such a broad expansion of federal jurisdiction.

An expansive interpretation of the term "enterprise" that renders the enterprise element redundant of a pattern of racketeering activity also raises double jeopardy concerns.¹⁷² The enterprise requirement is a pivotal element in the constitutionality of section 1962(c).¹⁷³ Because a defendant can be prosecuted separately for the crimes that form the "pattern of racketeering activity," a prosecution under section 1962(c) avoids violating the guarantee against double jeopardy only by requiring proof of a fact other than the facts required to prove the predicate offenses.¹⁷⁴ This separate fact as contemplated by section 1962(c) is the defendants' association with an enterprise operating in interstate commerce. Where, however, the defendant has already been prosecuted for the underlying racketeering acts,¹⁷⁵ is then prosecuted under RICO, and the enterprise element of the section 1962(c) violation consists only of the defendant's association in committing the underlying racketeering acts, the prosecution under section 1962(c) of RICO amounts to double jeopardy.¹⁷⁶

170. See notes 18-26 *supra* and accompanying text.

171. See notes 59-64 *supra* and accompanying text. In *United States v. Turkette*, 101 S. Ct. 2524 (1981), the Supreme Court dismissed the problem of federal encroachment on state criminal jurisdiction. In the *Turkette* Court's opinion:

Congress . . . enact[ed] the measure, knowing that it would alter somewhat the role of the Federal Government in the war against organized crime and that the alterations would entail prosecutions involving acts of racketeering that are also crimes under state law. There is no argument that Congress acted beyond its power in so doing. That being the case, the courts are without authority to restrict the application of the statute.

Id. at 2530.

172. See U.S. CONST. amend. V. See generally *United States v. Anderson*, 626 F.2d 1358, 1367-68 (8th Cir. 1980); Bradley, *supra* note 7, at 855-56.

173. *United States v. Anderson*, 626 F.2d 1358, 1367 (8th Cir. 1980).

174. *Id.*

175. Defendants can be separately prosecuted for the two predicate crimes. *United States v. Aleman*, 609 F.2d 298, 306 (7th Cir. 1979), *cert. denied*, 445 U.S. 946 (1980); *United States v. Rone*, 598 F.2d 564, 571 (9th Cir. 1979), *cert. denied*, 445 U.S. 946 (1980).

176. See *United States v. Anderson*, 626 F.2d 1358, 1367 (8th Cir. 1980); Bradley; *supra* note 7, at 855-56.

One court addressing the double jeopardy dilemma¹⁷⁷ extricated itself from the problem by basing the RICO prosecution on crimes for which the defendants had not been previously prosecuted.¹⁷⁸ If the defendants had been penalized previously on all of the offenses alleged as predicate acts under section 1961(1) of RICO and the court read “enterprise” broadly as encompassing the predicate offenses, the charges might amount only to re prosecution for the earlier offenses. This would present serious double jeopardy concerns.¹⁷⁹

The implicit conclusion that a RICO “enterprise” exists when defendants associate only to commit the underlying offenses that form a pattern of racketeering activity expands RICO far beyond the scope of its statutory language¹⁸⁰ and legislative history.¹⁸¹ Such an interpretation reads the term “enterprise” out of RICO and thus violates the rule of statutory construction that every word in a statute be accorded meaning.¹⁸² As a result it transforms the statute into a mere proscription against patterns of racketeering activity. A definition of enterprise that rests solely on individuals’ associations to commit a pattern of racketeering activity renders RICO constitutionally infirm for two reasons: First, it expands federal criminal jurisdiction into areas traditionally of state concern,¹⁸³ and, second, it creates a real threat of transgression of the constitutional guarantee against double jeopardy.¹⁸⁴

IV. CONCLUSION

The RICO enterprise requirement has presented two difficult problems. The first issue, whether the term “enterprise” encompasses illegitimate, as well as legitimate, organizations, was resolved affirmatively by the Supreme Court in *United States v. Turkette*.¹⁸⁵ Although RICO’s legislative history¹⁸⁶ and well-settled rules of statutory inter-

177. *United States v. Rone*, 598 F.2d 564, 571 (9th Cir. 1979), *cert. denied*, 445 U.S. 946 (1980).

178. *Id.*

179. *Id.*

180. See notes 18-26 *supra* and accompanying text.

181. See notes 59-64 *supra* and accompanying text.

182. See notes 149-50 *supra*.

183. See notes 169-71 *supra* and accompanying text.

184. See notes 172-76 *supra* and accompanying text.

185. See notes 95-115 *supra* and accompanying text.

186. See notes 58-73 *supra* and accompanying text.

pretation¹⁸⁷ favor a construction of “enterprise” limited to legitimate organizations, nothing in RICO’s statutory language prevents the *Turkette* interpretation.¹⁸⁸ Resolution of the second issue, whether the term “enterprise” encompasses individuals associated only to commit a pattern of racketeering activity, is, however, critical to the proper application of RICO. The implicit conclusion of the lower federal courts that “enterprise” can be defined as the defendant’s associations to commit racketeering acts reads the pivotal enterprise requirement out of RICO, violates the rule of statutory construction that meaning be accorded every word in a statute,¹⁸⁹ and creates serious questions concerning the constitutionality of RICO.¹⁹⁰

Only the Eighth Circuit Court of Appeals, in *United States v. Anderson*,¹⁹¹ has directly addressed the issue. The court’s conclusion that the term “enterprise” encompasses only associations that can be defined apart from the commission of the predicate acts constituting the “pattern of racketeering activity” is clearly correct. It is unfortunate that the Supreme Court failed to settle this issue clearly in *Turkette*. When the Court is again faced with the issue, the *Anderson* decision will stand as a guide to its proper resolution.

Joan Hagen Spiegel

187. See notes 74-96 *supra* and accompanying text.

188. See notes 18-26 *supra* and accompanying text.

189. See notes 149-50 & 156-59 *supra* and accompanying text.

190. See notes 167-78 *supra* and accompanying text.

191. See notes 136-45 *supra* and accompanying text.